SUBCHAPTER 06I – COMMUNITY CONSERVATION ASSISTANCE PROGRAM FOR NONPOINT SOURCE POLLUTION CONTROL

SECTION .0100 – COMMUNITY CONSERVATION ASSISTANCE PROGRAM

15A NCAC 06I .0101 PURPOSE

This Subchapter describes the operating procedures for the division under the guidance of the commission implementing the Community Conservation Assistance Program for Nonpoint Source Pollution Control. Procedures and guidelines for participating districts are also described. The purpose of the voluntary program is to reduce the delivery of nonpoint source (NPS) pollution into the waters of the State.

History Note: *Authority G.S. 139-4; 139-8; 143-215.74M; 143B-294;*
Eff. December 1, 2007.

15A NCAC 06I .0102 DEFINITIONS FOR SUBCHAPTER 06I

The following terms used in this Subchapter have the following meanings:

(1) Nonpoint Source (NPS) Pollution means pollution originating from a diffuse source.

(2) Allocation means the annual share of the state's appropriation to participating districts.

(3) Applicant means a person(s) who applies for best management practice cost sharing monies from the district. An applicant may also be referred to as a cooperator.

(4) Average Costs means the calculated cost, determined by averaging actual costs and current cost estimates necessary for best management practice implementation. Actual costs include labor, supplies, and other direct costs required for physical installation of a practice.

(5) Best Management Practice (BMP) means a practice used to reduce nonpoint source inputs to receiving waters, including both those types of practices which are structural or nonstructural management practices.

(6) Conservation Plan of Operation (CPO) means a written plan scheduling the applicant's decisions concerning land use, and both cost shared and non-cost shared BMPs to be installed and maintained on the operating unit.

(7) Cost Share Agreement means an agreement between the applicant and the district which defines the BMPs to be cost shared, rate and amount of payment, minimum practice life, and date of BMP installation. The agreement shall state that the recipient shall maintain and repair the practice(s) for the specified minimum life of the practice. The Cost Share Agreement shall have a maximum contract life of three years for BMP installation. The district shall perform an annual status review during the installation period.

(8) Cost Share Incentive (CSI) means a predetermined fixed payment paid to an applicant for implementing a nonstructural management BMP in lieu of cost share on a structural practice.

(9) Cost Share Rate means a cost share percentage paid to an applicant for implementing BMPs.

(10) Detailed Implementation Plan means the plan approved by the commission that specifies the guidelines for the current program year pursuant to the Rules of the Commission.

(11) District BMP means a BMP designated by a district to reduce the delivery of NPS pollution and which is reviewed and approved by the Division to be technically adequate prior to funding.

(12) Encumbered Funds means monies from a district's allocation, which have been committed to an applicant after initial approval of the cost share agreement.

(13) Full Time Equivalent (FTE) means 2,080 hours per annum which equals one full time technical position.

(14) In-kind Contribution means a contribution by the applicant towards the implementation of BMPs. In-kind contributions shall be approved by the district and may include labor, fuel, machinery use, and supplies and materials necessary for implementing the approved BMPs.

(15) Landowner means any natural person or other legal entity, including a governmental agency, who holds either an estate of freehold (such as a fee simple absolute or a life estate) or an estate for years or from year to year in land, but does not include an estate at will or by sufferance in land. A governmental or quasi-governmental agency such as a drainage district or a soil and water conservation district, or any such agency, by whatever name called, exercising similar powers for similar purposes, can be a landowner for the purposes of this Subchapter if the governmental agency holds an easement in land.

(16) Program Year means the period from July 1 through June 30 for which funds are allocated to districts.

(17) Proper Maintenance means that a practice(s) is being maintained such that the practice(s) is successfully performing the function for which it was originally implemented.

(18) Strategy Plan means the annual plan for the Community Conservation Assistance Program for Nonpoint Source Pollution Control to be developed by each district. The plan identifies pollution treatment needs and the level of cost sharing and technical assistance monies required to address those annual needs in the respective district.

(19) Technical Representative of the district means a person designated by the district to act on their behalf who participates in the planning, design, implementation and inspection of BMPs.

(20) Unencumbered Funds means the portion of the allocation to each district, which has not been committed for cost sharing.

History Note: *Authority G.S. 139-4; 139-8; 143-215.74M; 143B-294;*
Eff. December 1, 2007.

15A NCAC 06I .0103 ALLOCATION GUIDELINES AND PROCEDURES

(a) The Commission shall allocate the cost share funds to the districts in the designated program areas. To receive fund allocations, each district designated eligible by the commission shall submit an annual strategy plan to the commission at the beginning of each fiscal year. Funds may be allocated to each district and the Division for any or all of the following purposes:

(1) Cost share and cost share incentive payments,

(2) technical assistance and administrative assistance, and

(3) statewide or local education and outreach activities.

(b) The Commission shall consider the relative needs of the program for BMP implementation, local technical assistance, and education to determine the proportion of available funds to be allocated for each eligible purpose prior to allocating funds to districts and the Division.

(c) Funds for cost share and cost share incentive payments shall be allocated to the districts at the beginning of the fiscal year and whenever the Commission determines that sufficient funds are available to justify a reallocation. Districts shall be allocated monies based on the identified level of nonpoint source pollution problems and the respective district's BMP installation goals as demonstrated in the district annual strategy plan. The allocation method used for disbursement of funds is based on the score of each respective district for those parameters approved by the Commission pursuant to Subparagraph (9) of this Paragraph. The points each district scores on each parameter are totaled and proportioned to the total dollars available under the current program year funding according to the following formula:

(1) Sum of Parameter Points = Total Points

(2) Percentage Total Points Each District x Total Dollars Available = Dollars Available to Each District

(3) The minimum allocated to a particular district shall be one thousand five hundred dollars ($1,500) per program year, unless the district requests less than one thousand five hundred dollars ($1,500).

(4) If a district requests less than the dollars available to that district in Subparagraph (2) of this Paragraph, then the excess funds beyond those requested by the district shall be allocated to the districts who did not receive their full requested allocation using the same methodology described in Subparagraph (2) of this Paragraph.

(5) 95 percent of the total program funding shall be allocated to the district accounts in the initial allocation. The Division shall retain five percent of the total funding in a contingency fund to be used to respond to an emergency or natural disaster. If the funds are not needed to respond to an emergency, then the contingency fund shall be allocated at the March meeting of the Commission.

(6) The Commission may recall funds allocated to a district during a fiscal year that have not been encumbered to an agreement at any time if it determines the recalled funds are needed to respond to an emergency or natural disaster.

(7) At any time a district may submit a revised strategy plan and apply to the Commission for additional funds.

(8) CPOs that encumber funds under the current year must be submitted to the Division by 5:00 p.m. on the first Wednesday in June.

(9) Districts shall be allocated funds based on their respective data for each of the following parameters:

(A) Relative rank of the number of miles of stream identified as less than fully supporting due to nonpoint source pollution as reported in the North Carolina Water Quality Assessment and Impaired Waters List and the most recent Basinwide Water Quality Plan for each river basin, where the source of pollution is not solely due to agriculture. (20 percent) The North Carolina Water Quality Assessment and Impaired Waters list and the Basinwide Water Quality Plans are produced by the Division of Water Quality.

(B) Relative rank of the percentage of the county draining to waters classified as Outstanding Resource Waters, High Quality Waters, Trout, or Shellfishing (open) on the current schedule of Water Quality Standards and Classifications. (20 percent)

(C) The percentage of each county covered by NPDES Phase I and Phase II requirements. (20 percent)

(D) Relative rank of population density for the county. (20 percent)

(E) Relative rank of the percentage of a county's land area that is located within drinking water assessment areas, as delineated by the Public Water Supply Section of the Division of Environmental Health. (20 percent)

(d) The funds available for technical and administrative assistance shall be allocated by the Commission based on the needs as expressed by the district and needs to accelerate the installation of BMPs in the respective district. Each district may use these monies to fund new positions or to accelerate present technical assistance. Districts must provide an itemized budget to the division in order to qualify for technical assistance funds. N.C. Community Conservation Assistance Program technical assistance funds may be used for technical assistance with the district matching at least 50 percent of the total. Each district to which funds are allocated for technical assistance shall demonstrate to the Commission that matching funds are available prior to any expenditure of funds. The allocation method used for disbursement of funds is based on the score of each respective district for those parameters approved by the Commission pursuant to Subparagraph (4) of this Paragraph. The points each district scores for each parameter are totaled and proportioned to the total dollars available under the current program year funding according to the following formula:

(1) Sum of Parameter Points = Total Points

(2) Percentage Total Points Each District x Total Dollars Available = Dollars Available to Each District

(3) If a district requests less than the dollars available to that district in Subparagraph (2) of this Paragraph, then the excess funds beyond those requested by the district shall be allocated to the districts who did not receive their full requested allocation using the same methodology described in Subparagraph (2) of this Paragraph.

(4) Priority for funding shall be based upon the following parameters:

(A) Whether the position is presently funded by Community Conservation Assistance Program technical assistance funds. (25 percent)

(B) The proportion of Community Conservation Assistance Program funds for cost share and cost share incentive allocated to districts served by this technical assistance request (normalized to 1 to 100 scale by multiplying each district's score by a factor such that the product of the highest score for this parameter is 100) (50 percent), and

(C) The amount of additional funds leveraged by grants and other funds committed to districts served by this technical assistance request (normalized to 1 to 100 scale by multiplying each district's score by a factor such that the product of the highest score for this parameter is 100). (25 percent)

(5) Subject to availability of funds and local match, provide support for technical assistance for every district.

(6) District technicians may be jointly funded by more than one district to accelerate the program in each participating district. Each district must be eligible for cost sharing in the program. Requests for funding (salary, FICA, insurance, etc.) of a shared position must be presented to the division by all concerned districts and the division shall cost share to the billing district at a 50-50 rate based on the portion of the FTE provided each respective district. A shared position must be officially housed in one specific district and cost share for support items (office rent, telephone, etc.) shall be paid to one district only.

(7) Funds, if available, may be allocated to each participating district to provide for administrative costs under this program. These funds shall be used for clerical assistance and other related program administrative costs and shall be matched with in-kind funds of an equal amount from the district.

(e) The funds available for the education and outreach purpose shall be allocated by the Commission based on the needs as expressed by the district and needs to accelerate the installation of BMPs in that respective district. Districts and the Division may use these funds for holding workshops for potential applicants and for developing, duplicating, and distributing outreach materials or signs. Districts must provide an itemized budget to the Division in order to qualify for education and outreach funds. Education and outreach funds shall be allocated to each district in accordance with the following formula:

(1) Each district shall receive the lesser of one thousand dollars ($1,000) or the result of the following equation:

Total Dollars Available	x	Total Dollars Requested by Each District	÷	Total Dollars Requested by All Districts	=	Dollars Available to Each District

(2) If more funds are available for allocation than are requested by districts or the Division, then the excess funds shall be added to the funds to be allocated for cost share and cost share incentive payments.

History Note: *Authority G.S. 139-4; 139-8; 143-215.74M; 143B-294;*
Eff. January 1, 2008.

15A NCAC 06I .0104 BEST MANAGEMENT PRACTICES ELIGIBLE FOR COST SHARE PAYMENTS

(a) BMPs eligible for cost sharing are restricted to those BMPs listed in the Detailed Implementation Plan approved by the commission for the current program year. BMPs shall meet the following criteria to be listed in the Detailed Implementation Plan:

(1) All eligible BMPs must be designed to reduce the input of nonpoint source pollution into the water courses of the state.

(2) Information establishing the average cost of the specified BMP must be available. District BMPs may use actual costs as indicated by receipts, if average costs are not available.

(3) Eligible BMPs shall have technical specifications as set forth in Paragraph (b) of this Rule.

(b) BMP definitions and specifications shall be determined by the Commission using the process outlined in 15A NCAC 06H .0103 Approval of Best Management Practices.

History Note: *Authority G.S. 139-4; 139-8; 143-215.74M; 143B-294;*
Eff. December 1, 2007.

15A NCAC 06I .0105 COST SHARE AND INCENTIVE PAYMENTS

(a) Cost share and incentive payments shall be made through Cost Share Agreements between the district and the applicant.

(b) For all practices except those eligible for CSI, the state shall provide a percentage of the average cost for BMP installation not to exceed the maximum cost share percentages shown in subdivision (4) of G.S. 143-215.74M(b),and the applicant shall contribute the remainder of the cost. In-kind contributions by the applicant shall be included in the applicants' cost share contribution. In-kind contributions shall be specified in the agreement for cost sharing and shall be approved by the district.

(c) CSI payments shall be limited to a maximum of three years per applicant per incentive practice.

(d) Average installation costs for each comparative area or region of the state and the amount of cost share incentive payments shall be updated and revised at least triennially by the Division for approval by the Commission.

(e) The total annual cost share payments to an applicant shall not exceed the maximum funding authorized in subdivision (4) of G.S. 143-215.74M(b).

(f) Cost share payments to implement BMPs under this program may be combined with other funding programs, as long as the combined cost share rate does not exceed the amount and percentages set forth in Paragraphs (b) and (e) of this Rule. Community Conservation Assistance Program funding shall not exceed the maximum cost share percentages shown in subdivision (4) of G.S. 143-215.74M(b).

(g) Use of cost share payments is restricted to land located within the county approved for funding by the Commission. However, in the situation where an applicant's land is not located solely within a county, the entire tract, if contiguous, is eligible for cost share payments.

(h) The district Board of Supervisors may approve Cost Share Agreements with cost share percentages or cost sharing amounts less than the maximum allowable in subdivision (4) of G.S. 143-215.74M(b) if:

(1) The Commission allocates insufficient cost share BMP funding to the district to enable it to award funding to all applicants; or

(2) The district establishes other criteria in its annual strategy plan for cost sharing percentages or cost sharing amounts less than those allowable in subdivision (4) of G.S. 143-215.74M(b).

(i) For purposes of determining eligible payments under practice-specific caps described in the detailed implementation plan, all business entities with which the applicant is associated by ownership or partnership interest, including those in other counties, shall be considered the same applicant for purposes of calculating caps.

History Note: *Authority G.S. 139-4; 139-8; 143-215.74M; 143B-294; Eff. December 1, 2007.*

15A NCAC 06I .0106 TECHNICAL ASSISTANCE FUNDS

(a) Technical assistance funds may be used for salary, benefits, social security, field equipment and supplies, office rent, office equipment and supplies, postage, telephone service, travel and mileage or for a contracted technical employee.

(b) Technical assistance funds may not be used to fund provision of service by any technical assistance local district personnel who do not meet the following minimum requirements:

(1) associates degree in engineering, agriculture, forestry or related field, or

(2) high school diploma with two years experience in the fields listed in Subparagraph (1) of this Paragraph, or

(c) Cost shared positions must be used to accelerate the program activities in the district. A district technician cost shared with program funds may work on other activities as delegated by the field office supervisor but the total hours charged to the program by field office personnel must equal or exceed those hours funded through the program. Also, these hours must be in addition to those hours normally spent in BMP planning and installation by district personnel.

History Note: *Authority G.S. 139-4; 139-8; 143-215.74M; 143B-294; Eff. December 1, 2007.*

15A NCAC 06I .0107 COST SHARE AGREEMENT

(a) The landowner shall be required to sign the agreement for all practices. An applicant who is not the landowner may submit a long term written lease or other legal document, indicating control over the land in lieu of the landowner's signature, provided the control runs the life of the practice as listed in the respective Program Year's Implementation Plan. Signature on the agreement constitutes responsibility for BMP maintenance and continuation.

(b) As a condition for receiving cost share or cost share incentive payments for implementing BMP's, the applicant shall agree to continue and maintain those practices for the minimum life as set forth in the Detailed Implementation Plan, effective the date the BMP's are implemented.

(c) As a condition for receiving cost share payments, the applicant shall agree to submit a soil test sample for analysis and follow the fertilizer application recommendations as close as reasonably and practically possible.

(d) The technical representative of the district shall determine if the practice(s) implemented have been installed according to specifications approved by the Commission pursuant to 15A NCAC 06H .0103 or by the Division for district BMP's based on the criteria established in 15A NCAC 06H .0103(c). The district shall be responsible for making an annual spot check of five percent of all cost share agreements for which the required BMP maintenance period has not expired.

(e) If the technical representative of the district determines that a BMP for which program funds were received has been destroyed or has not been properly maintained, the applicant will be notified that the BMP must be repaired or re-implemented within 30 working days. For vegetative practices, applicants are given one calendar year to re-establish the vegetation. The district may grant a prescribed extension period if it determines compliance can not be met due to circumstances beyond the applicants control.

(f) If the practices are not repaired or reimplemented within the specified time, the applicant shall be required to repay to the Division a prorated refund for cost share BMPs as shown in Table 1 and 100 percent of the cost share incentive payments received.

Table 1
PRORATED REFUND SCHEDULE FOR NONCOMPLIANCE

OF COST SHARE PAYMENTS

Percent Age of Practice Life	Percent Refund
0	100
10	95
20	89
30	82
40	74
50	65
60	55
70	44
80	31
90	17
100	0

(g) An applicant, who has been found in noncompliance and who does not agree to repair or reimplement the cost shared practices, and a District may jointly request the commission to informally mediate the case. To invoke this method of mediation, both parties must stipulate that the commission mediation is binding.
(h) An applicant shall have 180 days to make repayment to the Division following the final appeals process.
(i) The inability to properly maintain cost shared practices or the destruction of such practices through no fault of the applicant shall not be considered as noncompliance with the cost share agreement.
(j) When land under cost share agreement changes owners the new landowner shall be strongly encouraged by the district to accept the remaining maintenance obligation. If the new landowner does not accept the maintenance requirements in writing, then the original applicant shall be required to refund 100% of all CSI payments and a prorated portion of cost share payments in accordance with Table 1 in paragraph (f) of this rule.

History Note: *Authority G.S. 139-4; 139-8; 143-215.74(M);*
Eff. June 1, 2008.

15A NCAC 06I .0108 DISTRICT PROGRAM OPERATION
(a) As a component of the annual strategy plan district shall prioritize all natural resource concerns according to pollution potential. The district shall target technical and financial assistance to facilitate BMP implementation on the identified critical areas.
(b) Priority by the district may be given to implementing systems of BMP's which provide the most cost effective reduction of nonpoint source pollution.
(c) All applicants shall apply to the district and complete the necessary forms in order to receive cost share payments.
(d) The district shall review each application and the feasibility of each application. The district shall review and approve the evaluation and assign priority for cost sharing. All applicants shall be informed of cost share approval or denial.
(e) Upon approval of the application by the district, the applicant and the district shall enter into a cost share agreement. The cost share agreement shall list the practices to be cost shared with state funds. The agreement shall also include the average cost of the recommended practice(s), cost incentive payment of the practice(s), and the expected implementation date of the practice(s). The district shall develop CPOs, which shall become a part of the cost share agreement.
(f) Upon completion of practice(s) implementation, the technical representative of the district shall notify the district of compliance with design specifications.
(g) Upon notification, the district shall review the CPO. Upon approval, the district shall certify the practices in the CPO and notify the Division to make payment to the applicant.
(h) Upon receipt of a quarterly statement from the district, the Division shall reimburse to the district the appropriate amount for technical and clerical assistance.
(i) The district shall be responsible for and approve all BMP inspections as set forth in Rule .0107(d) of this Section to insure proper maintenance and continuation under the cost share agreement.
(j) The district shall keep appropriate records dealing with the program.

History Note: *Authority G.S. 139-4; 139-8; 143-215.74(M); 143B-294;*
Eff. March 1, 2008.